

Mutual Exchange Policy

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Mutual Exchange Policy

1. Introduction

- 1.1 This Policy covers tenants of Rykneld Homes Limited (RHL) and North East Derbyshire District Council (NEDDC). This includes both secure and assured tenants.
- 1.2 Under Section 91 of the Housing Act 1985, secure or assured tenants of NEDDC and RHL have a right to exchange their tenancy with another qualifying tenant of the same landlord or other Local Authorities and Registered Providers. Assured tenants do not have a statutory legal right to mutual exchange; however, RHLs' Tenancy Agreement gives assured tenants the same right to apply as secure tenants.
- 1.3 Rykneld Homes aims to assist tenants and encourage mobility. Tenants may wish to move home for a variety of reasons:
 - To be closer to employment
 - To access a property that better meets their household's needs
 - To be closer to support networks.
- 1.4 Mutual exchanges (swaps) are a useful option to help tenants find alternative accommodation by identifying another eligible tenant with a property that is suitable for a swap.
- 1.5 Social housing is allocated to those in highest priority of housing need and so RHLs' tenants are encouraged to use the mutual exchange method as well as applying through Choice Move for a transfer.
- 1.6 Tenants applying for a mutual exchange must receive written permission from RHL before proceeding. There should be no cost to RHL because of the exchange; therefore, each tenant is required to agree to take on the responsibilities of the other tenancy. This is explained in more detail under the 'Deed of Assignment' section.
- 1.7 There are criteria set around whether an existing tenant will be eligible for a mutual exchange, this Policy aims to define this and provide clarity around the expectations of both RHL and tenants.

2. Objective and Principle

- 2.1 The overall aim of the Mutual Exchange Policy is to assist tenants to resolve housing need, encourage mobility and contribute towards the efficient and effective management of the Company's housing stock. It will assist the Company in providing a service which is flexible in trying to support individual needs and aspirations.
- 2.2 For the purposes of continual improvement and making efficiencies through innovation, RHL may enter into partnership arrangements to improve the administration, monitoring and completion of mutual exchanges.

3. Retention of Rights and Security of Tenure

- 3.1 A mutual exchange is different to a transfer, as the tenancies are swapped by means of a Deed of Assignment, rather than the tenancy ending and a new one beginning. For all mutual exchanges caution must be exercised to ensure tenancy protection for secure and assured tenants.
- 3.2 Section 35 of the Housing Act 1988 protects secure tenants from losing the Right to Buy and other associated rights if they move from one property to another. A secure tenant, who transfers to another property let by the same landlord, should keep their status as a secure tenant of the new property. Security of tenure for a mutual exchange is protected and, therefore, administered by means of a Deed of Assignment.
- 3.3 In circumstances where a tenant has inherited their tenancy by succession or it has been legally transferred to them by way of assignment from a family member, the succession rights follow the tenant and do not remain with the tenancy i.e. a tenant who is a successor under the original tenancy will remain a successor in their 'new' tenancy following a mutual exchange, whichever method of exchange is being used. Alternatively, if there has been no succession to the tenancy, the tenant takes this right with them when they move as a mutual exchange.

4. Deed of Assignment

- 4.1 A Deed of Assignment is when a mutual exchange occurs and the tenants swap tenancies rather than end the existing tenancy and creating new ones. This means the exchanging tenants 'step into each other's shoes' and takes on the rights and responsibilities of the other tenant. This has implications of which tenants should be made aware.
- 4.2 Rykneld Homes no longer offer Flexible Fixed Term Tenancies but do have several remaining from the short period these were offered. All remaining Flexible Tenancies are Flexible Fixed Term Secure tenancies. For Flexible Tenancies where one is a secure/assured lifetime tenancy, the exchange is not achieved by way of assignment, rather it is achieved by the grant of a new tenancy so that each tenant retains their existing status. There are also provisions to consider depending on when the Secure or Assured Tenancy was originally granted. Please see section 5 for more detail. The table below shows each scenario.

Tenant A	Tenant B	Status after Exchange
Secure	Secure	Both remain secure
Assured	Assured	Both remain assured
Secure	Assured	Secure tenant takes on the Assured Tenancy Assured tenant takes on Secure Tenancy
Secure	Flexible Fixed Term Social	Surrender and re-grant
Assured	Flexible Fixed Term Social	Surrender and re-grant

- 4.3 Each tenant must carefully consider what implications a Deed of Assignment has for them and if they are willing to accept any changes this will mean. They will need to look at all their current rights and responsibilities compared to those of the other

tenant and decide if this is acceptable. They may be required to relinquish some rights if they do not exist with the other tenancy.

- 4.4 Rykneld Homes will encourage applicants to seek independent legal advice before agreeing to a mutual exchange where any rights are diminished.
- 4.5 For an assignment to be effective there must be a written Deed of Assignment, signed by both parties and witnessed. If a tenant merely gives up the keys to another and tells them they can have the tenancy, this is not a valid mutual exchange or assignment in law and RHL, in these circumstances, will take action for breach of tenancy.

5. Mutual Exchange and Flexible Tenancies

- 5.1 Under the Localism Act 2011 there are provisions in place to protect the rights of a tenant holding a secure or assured 'lifetime' tenancy (granted prior to 1 April 2012), who want to exchange with a tenant holding a flexible or fixed term tenancy (for a minimum of two years). Tenancies granted before 1 April 2012, have a statutory right to retain their security of tenure. This can happen only once as any future re-grants will take place after 1 April 2012. Re-grant of tenancy is not completed by way of assignment but by tenancy surrender and re-grant.
- 5.2 Provision is made under Section 158 of the Localism Act 2011 for such mutual exchanges to take place, not by assignment but by way of surrender and re-grant for secure or assured tenancies granted after 1 April 2012, but they do not have the statutory right to retain the security of tenure, this is at landlord discretion.
- 5.3 Where a Flexible Fixed Term Tenancy wishes to exchange with another Flexible Fixed Term Tenancy, this can be achieved by assignment by means of Mutual Exchange. The tenants must consider the implications of this as they will be obliged to comply with the differing terms of the other tenant i.e. they will take on the remainder of the term of the other tenant, therefore, may be subject to review at an earlier date.

5.4

Tenant A	Tenant B	Status after Exchange
Secure or Assured protected 'lifetime' tenancy granted prior to 1 April 2012	Flexible Fixed Term Tenancy for two years or more	Tenant A – Secure or Assured by means of surrendering existing tenancy and re-granting a new secure or assured tenancy. Statutory right to retain security of tenure. Tenant B – At landlord discretion but advised to grant a secure or assured tenancy as would happen in a standard exchange.
Secure or Assured Tenancy granted after 1 April 2012	Flexible Fixed Term Tenancy for two years or more	Tenant A – Assignment to the flexible tenancy for the remaining period of Tenant B. Landlord discretion to offer a surrender and re-grant of Secure or Assured tenancy. Non-statutory right to retain same security of tenure. Tenant B – Assignment to Secure or Assured tenancy of Tenant A. If landlord discretion is being used to offer a surrender and re-grant the offer of a new secure

Tenant A	Tenant B	Status after Exchange
		or assured tenancy is required so Tenant B is not at a disadvantage.
Flexible Fixed Terms Tenancy (two years +)	Flexible Fixed Term Tenancy (two years +)	Tenant A Flexible Fixed Term Tenancy taking on the remainder of the term of Tenant B. Tenant B Flexible Fixed Term Tenancy taking on the remainder of the term of Tenant A.

6. Responding to Applications for Consent and References

- 6.1 Tenants can apply for a mutual exchange using the relevant application form, which must be submitted to RHL. Rykneld Homes will respond to requests within 42 days as prescribed in Schedule 3 of the Housing Act 1985.
- 6.2 In all cases, both tenants must have written permission from their landlord before proceeding with the mutual exchange, therefore, if a mutual exchange includes tenants from different landlords, consent is required from both landlords.
- 6.3 Before giving consent RHL will take up references from the respective landlord of the incoming tenant if not already an existing RHL tenant. The reference is to check the tenancy has been conducted in a reasonable manner in line with the content of this Policy.
- 6.4 When an application is received by an existing tenant, suitability checks will be completed to ensure no grounds for refusal exist. Please see section 10 of this Policy.

7. Property Inspections and Tenant Responsibilities

- 7.1 Incoming and outgoing tenants who swap tenancies by Deed of Assignment, or by means of a surrender and re-grant where a Flexible Tenancy is involved, agree to take on any responsibilities that were held by the previous tenant. For example, if the outgoing tenant has responsibility for the maintenance of a kitchen they fitted themselves; the incoming tenant assumes this responsibility. This is the same if the outgoing tenant is responsible to repair items due to damage, this then passes on to the incoming tenant after the mutual exchange takes place.
- 7.2 Rykneld Homes will not carry out repairs following a mutual exchange if they were the responsibility of the previous tenant. The only repairs RHL will undertake are those we are obliged to under the Tenancy Agreement and Section 11-16 of the Landlord and Tenant Act 1985 or where a repair could be considered '*prejudicial to health*' under the Environmental Protection Act or the Housing Health and Safety Rating System guidance.
- 7.3 Rykneld Homes will conduct a property inspection of the tenants who have existing tenancies with RHL and identify any possible issues with each tenant. The incoming tenant is encouraged to attend these inspections. Rykneld Homes will provide an indicative inventory of any outstanding repairs for which the incoming tenant would be responsible. The incoming tenant would remain responsible for any that are subsequently identified.

- 7.4 Rykneld Homes may recharge the incoming tenant who has taken over responsibility following the mutual exchange if a repair is deemed to be the responsibility of the previous tenant. The implications of the above will be carefully explained to incoming tenants before they sign a Deed of Assignment or new Tenancy Agreement.
- 7.5 Rykneld Homes will require the incoming tenant to sign a declaration to confirm their understanding of the repair responsibilities they will inherit from the previous tenant as a consequence of the mutual exchange.

8. Joint Tenancies

- 8.1 If a tenancy is a joint tenancy, both parties must fully understand the implications of the application and all associated conditions. Before the mutual exchange can take place, both parties must agree to the exchange and sign the Deed of Assignment in the presence of an Officer from RHL as witness.
- 8.2 If RHL are not confident both joint tenants understand or agree to the mutual exchange, we will suspend the application until the case has been fully reviewed by senior management. Additional information may be requested before the mutual exchange can progress.

9. Starter or Introductory Tenancies

- 9.1 New tenancies are subject to a probationary period before a secure or assured tenancy is confirmed. At RHL, this is normally for a period of 12 months, but can be extended for an additional six months.
- 9.2 Tenants must be a secure or assured tenant before applying for a mutual exchange. Rykneld Homes will not accept applications from tenants still on an Introductory or Starter Tenancy.

10. Grounds for Refusal of a Mutual Exchange

- 10.1 Rykneld Homes have the right to refuse a mutual exchange request based on legislation, as set out in Schedule 3 of the Housing Act 1985 for tenancies which started prior to 1 April 2012 and Schedule 14 of the Localism Act 2011 for tenancies granted after 1 April 2012. We will evaluate the circumstances of each application; an application will be refused if any of the following ground applies:

* This table shows summarised wording. Please refer to the Act itself for exact wording.

Tenancies granted <u>prior</u> 1 April 2012 Schedule 3 Housing Act 1985	Tenancies granted <u>after</u> 1 April 2012 Schedule 14 Localism Act 2011 Section 158	Description
-----	Ground 1	That rent lawfully due from a tenant under one of the existing tenancies has not been paid.
-----	Ground 2	An obligation under one of the existing tenancies has been broken or not performed.
Ground 1	Ground 3	Any of the relevant tenants is subject to an order of the Court for possession of the dwelling house let on that tenant's existing tenancy.

Tenancies granted <u>prior</u> 1 April 2012 Schedule 3 Housing Act 1985	Tenancies granted <u>after</u> 1 April 2012 Schedule 14 Localism Act 2011 Section 158	Description
Ground 2	Ground 4 (secure tenancies); and Ground 5 (assured tenancies)	1. Either of the following conditions is met: 2. The first condition: a) Proceedings have begun for possession which is a secure/assured tenancy; and b) Possession is sought on one or more of grounds 1 to 6 in part 1/2 of Schedule 2 to the Housing Act 1985/8. 3. The second condition: a) a notice has been served on a relevant tenant under Section 83/8 of that Act; and b) the notice specifies one or more of those grounds and is still in force.
Additional Ground in Housing Act 1985	Ground 6	One of the following injunction orders (Section 153 of the Housing Act) is in force either against the tenant and/or the proposed person who resides with them: • Anti-social behaviour • Demotion order • Order under Ground 2 for secure tenancies • Order under Ground 14 for assured tenancies.
Ground 3	Ground 7	The property is substantially larger than is reasonably needed by the proposed assignee. (The household would be deemed to under-occupy the property by one or more bedroom as specified within the NEDDC Allocations Policy).
Ground 4	Ground 8	The property is not reasonably suitable for the needs of the proposed assignee and their household. Schedule 3 Housing Act 1985 – the household would be deemed to be overcrowded.
Ground 5	Ground 9	The property forms part of or is in the curtilage of a building which is held for largely non-housing purposes or is situated in a cemetery and was let in connection with employment with the landlord, or with a Local Authority, a New Town Corporation, Housing Action Trust, Development Board or Rural Wales, or the Governors of a grant-aided school.
Ground 6	Ground 10	The landlord is a charity and the proposed assignee's occupation of the property would conflict with the objects of the charity.
Ground 7	Ground 11	The property has been substantially adapted for occupation by a physically disabled person and, if the assignment was approved, a physically disabled person would not be living there.
Ground 8	Ground 12	The landlord provided specialist accommodation for people in difficult circumstances (other than merely financial circumstances) and if the exchange took place there would be no such person living in the dwelling.

Tenancies granted <u>prior</u> 1 April 2012 Schedule 3 Housing Act 1985	Tenancies granted <u>after</u> 1 April 2012 Schedule 14 Localism Act 2011 Section 158	Description
Ground 9	Ground 13	The dwelling is intended for persons with special needs and there is a special facility nearby to the properties that is supported by a service in order to assist the tenants with those special needs. If the exchange took place, there would be no person with those special needs living in the dwelling.
Ground 10	Ground 14	The dwelling is the subject of a management agreement whereby the manager is a Housing Association of which at least half the members are tenants subject to the agreement and at least half of the tenants of the dwellings are members of the Association and where the proposed assignee is not such a member nor is willing to become one.

- 10.2 If RHL withholds consent due to any of the above grounds, we will give written notice of refusal for the mutual exchange within 42 days of the tenant's application. The refusal notice will explain the ground(s) as the reason permission has not been granted for the mutual exchange.
- 10.3 If RHL fails to give notice of refusal within 42 days the right to withhold consent is lost. However, in the absence of a response from RHL, the tenant cannot assume consent is granted and must contact RHL to confirm the right to mutually exchange despite the landlord no longer having grounds to refuse. The tenant cannot proceed until permission is confirmed.

11. Rent Arrears and Debt

- 11.1 Rykneld Homes will always require any rent arrears or debt associated with the tenancy to be cleared before an exchange can proceed.
- 11.2 Under Section 93 of the Housing Act 1985, RHL can give Conditional Consent where there are rent arrears, associated debt or there otherwise is a breach of the Tenancy Agreement, requiring the tenant to pay the outstanding rent or debt or remedy the tenancy breach before the exchange can proceed. Rykneld Homes cannot impose conditions to consent if no rent arrears or tenancy breach exists.
- 11.3 Rykneld Homes can give conditional consent after the 42-day period has expired if a breach exists. This means a conditional agreement can be made subject to the breach of tenancy being resolved; however, final consent will not be given until this has happened.
- 11.4 The tenant cannot proceed if RHL fails to respond to the mutual exchange request within the 42-day period. The tenant must clarify consent either with RHL or through the County Court.

12. Affordability

- 12.1 Rykneld Homes, as part of the assessment to consider a mutual exchange request, will conduct an affordability check with the incoming tenant to assess their ability to pay the rent on the property based on their income and expenditure. Affordability is

not a ground for refusal; however, RHL may offer advice not to proceed with the request if there is a risk of rent arrears. The implications of rent arrears will be fully explained to the incoming tenant. The decision whether to proceed with the mutual exchange application will remain with the tenant.

13. Exchange of Money

- 13.1 There must not be, under any circumstances, any offer of money to incentivise the other tenant to agree to a mutual exchange or throughout any part of the process. This is prohibited in law and is a discretionary ground for possession. Should RHL become aware of a payment arrangement as part of a mutual exchange, it reserves the right to commence legal proceedings.

14. Discretionary Circumstances

- 14.1 Under exceptional circumstances, RHL may allow mutual exchanges to go ahead where there would normally be grounds for refusal. This will be taken on a case by case basis and fully assessed by members of our Senior Management Team. Rykneld Homes maintain the right to approve a mutual exchange outside of this Policy where, based on individual circumstances, it is deemed appropriate to do so.

15. Appeals Process

- 15.1 Current and former tenants have the right to appeal against a mutual exchange decision if they feel it is unreasonable by lodging an appeal. Appeals are required to be received in writing, detailing the reasons for the appeal to the Neighbourhoods Manager of RHL.

16. Monitor and Review

- 16.1 Indicators, including the number of mutual exchange applications and the number of approvals, are monitored as part of the performance framework.

17. Contact

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